

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

M

FILE:

Office: TEXAS SERVICE CENTER

Date:

APR 07 2004

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. §1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on June 17, 2002. The director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal--(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) Untimely appeal treated as motion. If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The applicant, on appeal, states that he has lived in the United States since 1998. He states that he did not file an application for TPS during the initial registration period because he was unemployed at the time and he was scared to apply because of his situation. The applicant states that he would like to have the opportunity to obtain better employment and remain in the United States to enjoy greater opportunity and to be able to pay his taxes. The applicant submits additional evidence of residence in the United States. He does not indicate that he is filing a separate written brief or statement. Moreover, the applicant does not address the issue of eligibility for late registration. Thus, the applicant's statement on appeal does not meet the requirements of a motion.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The decision, dated March 27, 2003, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing, the appeal in this case should have been filed on or before April 29, 2003. The applicant submitted a Notice of Appeal, Form I-290B, on April 21, 2003, however, the appeal form had not been properly signed and was rejected and returned to the applicant on April 22, 2003. The applicant did not return the properly executed Form I-290B until May 8, 2003.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

It also is noted that the applicant was apprehended at Brownsville, Texas, on February 9, 1999. This is in direct conflict with the applicant's statement on the Form I-821 that he entered the United States on January 25, 1998. It also is noted that the applicant was ordered deported in absentia at Miami, Florida, on June 11, 1999, because he failed to appear for his immigration hearing.


Page 3

The burden of proof is upon the applicant to establish that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is rejected.